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No. 22

In the Supreme Court of the United States

October Term, 1940

LEWIS G. HINES, Secretary of Labor and Industry of the Commonwealth of Pennsylvania, et al., Appellants

v.

BERNARD DAVIDOWITZ

and

VINCENZO TRAVAGLINI

On appeal from the District Court of the United States for the Middle District of Pennsylvania

---

BRIEF FOR APPELLEES

NEEDLE, NEEDLE & NEEDLE,
Scranton, Pennsylvania

HERMAN STEERMAN,
ISIDOR OSTROFF,
1600 Walnut Street,
Philadelphia, Pennsylvania,
Counsel for Appellees.

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Appellants.

v.

BERNARD DAVIDOWITZ AND VINCENZO TRAVAGLINI

Appeal from the District Court of the United States for the Middle District of Pennsylvania

BRIEF FOR THE APPELLEES

OPINION BELOW

The opinion of the United States District Court for the Middle District of Pennsylvania (R. 20-32) is reported in 30 F. Supp. 470.

JURISDICTION

The judgment of the United States District Court for the Middle District of Pennsylvania was entered November 30, 1939 (R. 32-33). The appeal (R. 34-35) was filed on February 7, 1940, and the order allowing the appeal

(R. 37) was entered on February 8, 1940. Probable jurisdiction was noted by the Court on March 25, 1940. The jurisdiction of this Court rests on Section 266 of the Judicial Code as amended (28 U. S. C. A. 380).

STATEMENT

Appellees are content to rely on the statements set forth by the Attorney General of the Commonwealth of Pennsylvania in brief of the Appellants, and by the Solicitor General of the United States in his brief as Amicus Curiae. There is no need to burden the Court with further statements explaining how this litigation arose.

SUMMARY OF ARGUMENT

1. The Act Is Discriminatory, Unreasonable, Inconsistent and capricious.

Appellees respectfully refer the Court to the Transcript of the Record where the Act in controversy is fully set forth (R. 11).

A reading of the Act leads to the inescapable conclusion that it is loosely and carelessly drawn, that it is inconsistent, discriminatory, unreasonable and, as will be shown, even capricious. The Act purports to provide for the registration of certain aliens "residing" in Pennsylvania. It creates two offenses: failure to register; and failure to carry a registration card.

In addition to the two offenses created by the Act and the penalties fixed upon offenders under the terms of the Act, it proscribes issuance of automobile owners' and operators' licenses to such aliens. We deem it important to analyze the Act clause by clause and section by section before this Court hears further argument.

Section 1 of the Act states that it applies to all aliens except those under 18. However, a later exception in the

same section says that if parents of aliens under eighteen are aliens, the registration of such parent must list the names and ages of all children under eighteen residing with such alien parents, including not only alien children but children who may be citizens of the United States, natural or naturalized. The Act provides that any alien who registers under it must list the names and ages of all children under eighteen residing with such alien, and if they are not his own children, the names of the parents of such children and such other information as the Pennsylvania Department of Labor may direct.

The Act also excepts from the registration provisions an alien who is the father or mother of a son or daughter who served in the service of the United States during any war, regardless of length of residence in Pennsylvania or in the United States, of such parent. The parent may have come here at any time since January 1, 1909. The parent of such person may have just been admitted from a country where his activities, political and otherwise, were steeped in a philosophy contrary to the welfare of the Commonwealth of Pennsylvania and of the United States of America. Yet such a parent, despite subversive intentions, would be exempt solely because a son or daughter was in the service of the United States during any war.

Now the term "service" is not defined or explained. It is possible to define the word "service" as employment on the railroads which were operated by the United States during the World War, or employment as chauffeur, stenographer or clerk in any department or bureau of the Federal government, or in any capacity including military service. It could *not* include a nurse with the Red Cross, Y. M. C. A., Salvation Army or any other of the many agencies which helped maintain the morale of the members of the armed forces of the United States in the late United States wars. Yet the parents of a boy who came of enlistment age say, for example, in 1919, and who joined a

branch of the United States armed forces, and during all the intervening years served in the various engagements in which our armed forces have seen duty both on the American continent and abroad, and those parents may have been here from any time after January 1, 1909, they would nevertheless be subject to the Act regardless of where their sympathies lay. Their sympathies might be enthusiastically with our form of government and with our institutions, yet if they neglected or overlooked declaring their intention to become citizens or could not avail themselves of the many privileges that go with being a citizen, they would be subject to the Act and would have to register, pay the fee and carry the card.

The brief of Appellants seems to indicate that one of the beneficial results of this legislation in Pennsylvania would be to curb subversive activities but the Act does not take into consideration the political philosophies and governmental loyalties of those it affects. It merely creates artificial, arbitrary, discriminatory classifications based on caprice and caprice alone. Section I also speaks of declaration of intention of becoming a citizen. There are great numbers of persons in the United States, and a good many in the Commonwealth of Pennsylvania, who cannot become citizens. The Commissioner of Naturalization in his report of April 1, 1925 on Page 16 said, concerning applicants for registration:

> "The Supreme Court of the United States has held in the case of those coming to this country after June 29, 1906, that it is a mandatory requirement that a certificate of arrival be filed as part of the application for naturalization. There are large numbers of cases where for some reason for which the alien is not responsible there is no record of the date, place or manner of his arrival before January 3, 1921. (The date of the beginning of the quota restrictions.) In these

> cases it would seem unjust to deny the alien, who had not evaded the law and who is not responsible for lack of records, a certificate of arrival and thereby prevent him from having his eligibility for naturalization determined."

Another factor overlooked in the provision which seeks to exempt those who have declared their intention to become citizens, is the peculiar phraseology of this exemption. The Act provides that any one who has filed a declaration of intention to become a citizen and who, within three years, fails to become a citizen is not exempt from the provisions of the Act. The Federal Naturalization Act provides, however, that in order to become a citizen one must have resided continuously in the United States for at least five years (8 U. S. C. Sec. 382). One who has been in the country less than two years when he files his declaration of intention cannot become a citizen within three years after his declaration was filed. Under the Pennsylvania Act an immigrant who has just entered the United States may avoid the obligation of registering by filing a declaration of intention to become a citizen. For the next three years he need not register. In the following two years, after he has learned something of our institutions, something of the political philosophies of our government, something of the traditions of the form of government under which we live in the United States, then he must register as an alien, even though he is closer to citizenship and closer to assimilation than at any time during the first three years during which he was exempt under the Act. Certainly this is a capricious provision. How can the Commonwealth seriously contend that its purpose is to keep a record of those who are unfamiliar with our ways? How can the Commonwealth exempt a person for the first three years of his stay in the Commonwealth if he has declared his intention of becoming a citizen and then for the next two years say that he must register so that the Commonwealth will know where to keep its eye on him!

The Act also exempts aliens who have resided in the United States since December 31, 1908 and who have never been convicted of any criminal offense in any Court of record. Suppose an alien who is here since the date mentioned was convicted, before a magistrate or justice of the peace, for playing golf on Sunday, which is a violation of the Pennsylvania Blue Laws of 1794. He is fined $4.00, the maximum penalty, and files an appeal to a Court of record, where the matter is heard de novo. He is again found guilty. Would that take him outside the exception and make it necessary for him to register?

Section 1 of the Act also speaks of an "American" citizen. The word "American" is not defined, explained or construed in the Act. Would a citizen of Canada, Mexico, Cuba, Argentina, Brazil, Chile, Ecuador or any other Latin-American Republic be an American under the terms of this Act? Our great President, in his splendid Columbus Day oration, speaking to the Latin-American countries, spoke of all of the American Republics as "The Americas" and in another place as "We, of the Americas." (Philadelphia Record October 13, 1940.) If the exemption does apply to the citizens of other American countries is this not an additional violation by Pennsylvania of the treaty making powers of the United States?

There are other mysteries in the phraseology of this Act. The last sentence of Section 1 says, "Such registration shall show the name, age . . . of such *alien member* . . ." (Italics ours). Nowhere in this section or in any other part of the Act is there anything to show what the alien could be a member of. There is no antecedant clause, noun or designation showing where the alien's "membership" applies. What could the Legislature have meant?

The Act also gives inquisitorial powers to the Secretary of Labor and Industry and unlawfully delegates to him powers requiring information from the alien concerning

children, citizens and aliens alike, who reside with any registrant.

Section 1 of the Act provides that every such alien, becoming a resident of the Commonwealth of Pennsylvania after January 1, 1940 shall, in like manner, register within thirty days after becoming such resident. This provision is inconsistent with Sections 2 and 5 which require such aliens to carry identification cards at all times and to exhibit same on demand even within the thirty-day period during which the poor, unwelcome alien becomes a resident of the heretofore friendly Commonwealth of Pennsylvania.

Sections 2 and 5 contain no exceptions for the itinerant alien. What does the word "resident" mean? It is not defined in any part of the Act and it is vague as used in the Act. Is it to be given the interpretation rendered under the Pennsylvania Adoption Act of 1855 where even a temporary resident of Pennsylvania is able to obtain the benefit of adoption statutes? Does the Legislature contemplate the inclusion of limits of domicile? Does the word "resident" mean one who has domiciliary intentions? Would it affect an alien who spends the season in one of the many beautiful vacation resorts in Pennsylvania? The word "resident" is too vague, and will make this Act difficult of enforcement, if it can survive this constitutional test.

The provisions of Section 2 are vague. If the class affected can be determined from the slipshod, loosely-drawn Section 1, then as to that vague class, the Act imposes a fee which violates the Pennsylvania constitutional provision (Article IX Sec. 1) for uniformity of taxation, because the registration fee under this Act must be paid by an artificially created class of aliens and not by all aliens; by an artificially and arbitrarily created group of persons and not by all persons. This Section also provides that the registrant must carry the card at all times and must exhibit it upon demand by any police officer or agent of the De-

partment of Labor and Industry displaying evidence of his authority. Again this creates a burden on an itinerant alien who must prove to the satisfaction of some petty police official or petty agent that he is a resident of Pennsylvania. It brings up all the objections mentioned above in discussing the word "resident."

Section 3 of the Act prohibits the issuance of owners' or operators' licenses to aliens who refuse to register in accordance with the terms of the Act. Such refusal might prevent plaintiff Travaglini, and others similarly situated, from obtaining employment or from hiring aliens similarly situated or not registered where a driver's license is required. That is unlawful discrimination which violates the Fourteenth Amendment (Sec. 1) which provides that no state shall

> "deprive *any person* of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Section 4 of the Act states that the Department shall have the power to make and enforce rules and regulations and carry into effect and enforce the provisions of the Act. The Legislature did not require photographs, fingerprints or other such evidence of identification. Suppose the Secretary of Labor and Industry of the Commonwealth of Pennsylvania in his rules and regulations requires photographs or fingerprints, would that be an abuse of the power granted him?

Section 4 further provides that the copies of such records shall be filed with the Pennsylvania Motor Police. This creates a new type of police supervision over the poor alien in Pennsylvania.

Section 5 stipulates the penalties for failure to register and provides for a fine of $100 or sixty days in jail or both, and provides as punishment for failing to carry the regis-

tration card and failing to exhibit it when demanded, $10 fine or ten days in jail or both. However, nowhere in the Act is the offense defined as a misdemeanor, felony or any other category of crime.

Section 6 (a) places no limit of time within which an information must be filed in the name of the Commonwealth with justices of the peace, aldermen or magistrates. The only limitation is that

> "within not less than five days or more than ten days after the information is filed the magistrate, alderman or justice of the peace must send by registered mail to the person charged, at the address of such person, a notice in writing of the filing of the information together with a copy thereof, and a notice to appear within ten days of the date of the written notice."

The Act does not say how the alderman or magistrate will get the address of the person to whom he is to send the registered mail nor does it say where hearings will be held for such offenses. That, we presume, is all part of the regulations which the Secretary of Labor and Industry is empowered to promulgate. However, failure to appear makes the person liable to arrest on warrant. There is no limit to the amount of bail a magistrate can set, there is no right given to waive a summary hearing, there is no mention of any right of appeal. If there is an implied right of appeal, there is no mention of the court to which to take such appeal. The offense is not defined as a crime, a felony or a misdemeanor.

There is a serious doubt as to the validity of service of notice to appear by registered mail in a proceeding of this kind. The mere fact that failure to appear requires the issuance of a warrant of arrest does not cure the defect.

Nowhere in the Act is there any mention of diplomatic immunity. Consular officers residing in Pennsylvania would

be required to register under this Act. Such a provision clearly is a violation of international law which dates back as far as the "ius gentium" of Roman times.

In the oral argument in the Court below and in the brief filed by Appellant in this Court, the Commonwealth of Pennsylvania contends that the Pennsylvania Alien Registration Act was enacted in order to secure information in regard to aliens within its own boundaries. We respectfully submit that analysis of the language of the Act shows that the information which the Commonwealth would get as a result of the enforcement of this Act will be far short of any helpful information. If the Commonwealth were sincere in its contention that it seeks information, registration would have been made universal in the Commonwealth and not merely registration of a group of aliens established by caprice, compromise and haggling as to what aliens, if any, to register.

The Commonwealth insists that the statute does not interfere in any way with an alien's compliance with the Naturalization statutes. We have demonstrated that the Act does interfere. An immigrant here less than two years could declare his intention to become a citizen and for the first three years of his declaration he would not be liable to the provisions of the Registration Act but during the rest of the time necessary to complete his five years' residence in the United States he would be subject to the requirements of the Act.

2. The Act Encroaches Upon a Field Reserved to Federal Action.

After reading the very able brief of the Solicitor General of the United States heretofore filed herein as Amicus Curiae, we hesitate to burden the Court with further citations or further explanation of the citations contained in the Solicitor General's excellent brief. Repetition is not necessary to impress this Court with the points sought to

be made here. Suffice it to say that the Commonwealth concedes that immigration and naturaliaztion under Article 1, Section 8, Clause 3 of the United States Constitution, are within the exclusive power of Congress. However, the Commonwealth of Pennsylvania, in the brief filed by its learned Attorney General, seeks to have this Court say that the provision cited does not place entire jurisdiction over aliens under Congress; and that the State, under the police power, can place restrictions and limitations on aliens. We must admit that this bare statement is true: but it is only a half-truth and does not go far enough. The State can control aliens as well as citizens who violate definite criminal statutes which apply to all persons, or all aliens, but the State cannot enact legislation which merely seeks to regulate aliens because of alienage. We would be faced with a terrible situation in this country if an alien would have to cope with forty-eight different laws in addition to the laws of the United States. The point involved here was very effectively decided in the case of PEOPLE v. BAUM, 251 Michigan 187, where the Supreme Court of Michigan stated:

> "To permit one State to dump its convict criminals into another, would entitle the state believing itself injured thereby to exercise its police and military power in the interest of its own peace, safety and welfare to repel such invasion. It would tend to incite contention, provoke retaliation and disturb the fundamental equality of political rights among the several states which is the basis of the Union itself. Such a method of punishment is not authorized by statute and is impliedly prohibited by public policy."

In the case of TRUAX v. RAICH, 239 U. S. 33, at p. 39, this Court said:

> "This alien was admitted with the privilege of

entering and abiding in the United States and hence of entering and abiding in any state of the Union."

Under the provisions of the statute in the case at bar, it would be necessary for every person of foreign birth within the Commonwealth to carry a prescribed certificate of legal residence so that he may at all times be able to show a prospective employer, a prospective client or customer, or any policeman who may happen to stop him on the street, that he is a legal resident of the United States and of Pennsylvania. It would also be necessary for any person coming from Ohio, New York, New Jersey, Delaware, West Virginia or any other state of the union into Pennsylvania for business, whether for a day or a month to carry with him proof which the Commonwealth of Pennsylvania shall designate as sufficient, of the legality of his presence in the United States, or in lieu thereof proof that he is only in Pennsylvania as a temporary visitor and that he will not stay more than thirty days.

It requires no prophetic vision to foresee the consequences if State legislation of this type be upheld. Within the space of a few years we would no longer have a nation whose frontiers consist only of the Canadian and Mexican borders and the Atlantic and Pacific Oceans. Instead we would be confronted with a situation approximating that which existed in Europe before the war and which exists there today. It is not exaggeration to say that this country would take on the appearance of forty-eight armed camps with officials and inspectors at every state line. A resident of Camden, New Jersey who tries to motor to Philadelphia on a Sunday afternoon to visit a relative or a friend will find himself confronted with all the red tape and restrictions confronting the tourist who tries to go from Lisbon to Paris. Citizens will become less and less citizens of the United States and to a greater degree citizens of Pennsyl-

vania, New Jersey, Delaware or whatever State they may happen to reside in.

Judge Biggs in the learned opinion filed in the Court below (30 F. Supp. 470) cited many cases which have been adjudicated by this Court which uphold the principle that only the Federal government can legislate with respect to any system of registration and identification of aliens admitted to the United States (R. 26).

In the oral argument in the Court below Pennsylvania's Attorney General set great store by his contention that the Commonwealth owns the roads and therefore has the right to prescribe who shall and who shall not use those roads and under what terms they may be used. However, the Attorney General overlooked the fact that the Federal government subsidizes the state to a great extent in the maintenance of roads; that many of the through roads are United States highways; that those roads are necessary in interstate commerce, and for that reason the use of the roads, subject to the ordinary police powers of the Commonwealth, is also a matter for Federal regulation. Judge Biggs in the lower Court cites the case of ARROW-SMITH v. VOORHIES, 55 F (2d) 310, where a Michigan statute, very similar to the one at bar, provided among other things that persons of foreign birth illegally entering the United States would be denied admission to Michigan or if detected after entry, should be deported from Michigan, and that unnaturalized foreign born citizens should obtain certificates of legal residence. The Federal Court there held the statute unconstitutional and stated that by its terms the State of Michigan was attempting to usurp the power vested by the Constitution exclusively in Congress "over the control of aliens and immigration." The Court cited HENDERSON v. MAYOR OF NEW YORK, 92 U. S. 259, and CHY LUNG v. FREEMAN, 92 U. S. 275 stating:

> "The power to regulate the terms and conditions under which aliens may live in any of the several states, having been given by the Constitution to the Federal Government and that government having exercised it, the right of the Federal Government is paramount and exclusive and the Act under consideration is an unlawful invasion of it."

In the case of TRUAX v. RAICH, (supra), Chief Justice Hughes delivering the opinion of this Court, stated that an Arizona law which provided that any person, or corporation, employing more than five individuals at one time should employ no less than eighty per cent qualified electors or native born-citizens of the United States, was unconstitutional. The learned Chief Justice stated (p. 42):

> "The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the state, would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they cannot work. And if such a policy were permissable the practical result would be that those lawfully admitted to the country under the authority of the Act of Congress, instead of enjoying in a substantial sense and in their full scope the privileges conferred by the admission, would be segregated to such of the States as chose to offer them hospitality."

Judge Biggs in the opinion below drew the analogy to this case in his opinion when he says (R. 28):

> "While the Truax case deals specifically with a limitation imposed by a statute upon the right of an alien to earn a living, its principle is applicable

under the circumstances in the case at bar for Travaglini cannot live in Pennsylvania except under the burden of compulsory registration, precisely as Raich could not live in Arizona unless he was permitted freely to earn his livelihood. As stated by the Chief Justice, an alien cannot live where he cannot work. It is equally true that an alien cannot work where he cannot live. In the case at bar as in the Truax case, the right of the alien to reside within the state is circumscribed by statute.

"The power of the Federal government to require the registration of aliens is clear. Congress has legislated to some extent in this particular field already. See Act of June 29, 1906, c. 3592 Sec. 1, 34 stat. 596 (8 U. S. C. A. 106) and Act of February 5, 1917, c. 29, Fed. 12, 39 stat. 882 (8 U. S. C. A. 148).

"Congress has also legislated in respect to a large part of the field of alien control, specifying terms and conditions upon which aliens may remain in the United States, the method of their entry and the conditions under which they may be deported. A considerable portion of Title 8 of the Code of the United States (8 U. S. C. A.) is devoted to these subjects . . . ".

(This opinion was written before the enactment of the Federal Registration Act of 1940.)

Using the words of Judge Biggs (R. 29):

"The Act therefore is unconstitutional because it purports to operate in a field in which the individual states of the United States are without

authority to legislate. Therefore, it may not be justified as an exercise of the police powers of the State of Pennsylvania. It attempts to usurp power provided by the Constitution to the Federal Government."

3. The Act Denies Equal Protection of the Laws to Aliens in Pennsylvania.

In the first part of our argument we have tried, by analysis of the Act, to show that this was an ill-conceived piece of legislation. The title of the Act reads:

> "An Act requiring certain aliens to register with the Department of Labor and Industry and to carry and upon proper demand to exhibit identification cards; prohibiting the issuing of certain registrations and licenses to aliens under certain circumstances; and prescribing penalties."

Had the Legislature enacted a Licensing Act prescribing what qualifications were necessary for the driving of an automobile and had the Commonwealth stated there that one of the qualifications necessary was citizenship, there is no doubt the Act would be unconstitutional. How much more so is it unconstitutional if the denial of a driver's license is based upon the refusal of an alien to comply with the Registration Act. As the learned Court below said (R. 29):

> "Since the Act impairs the right of an exempt alien to reside within the Commonwealth of Pennsylvania, the Commonwealth has legislated in a field reserved to the Federal Government, the classification of the Act is as unwarranted as it is unreasonable and the alien is thereby denied the equal protection of the laws guaranteed to him by Section 1 of the Fourteenth Amendment."

We could quote at length from many citations in the cases before the United States Supreme Court on pertinent points but hesitate to do so because most of these citations already appear in the able brief already filed by the Solicitor General. We respectfully contend that behind the intent of the Pennsylvania Act here in question is an attempt to exclude from the Commonwealth of Pennsylvania those who do not or will not register in accordance with its terms. The Act does not say that upon a single conviction for failure to register, the alien shall thereafter be exempt from the terms of the operation of the Act. On the contrary, as long as the alien remains a conscientious objector and insists on living in Pennsylvania so long is he subject to the penalties visited upon him by the Pennsylvania Alien Registration Act. Apparently Pennsylvania seeks to avoid any charge of usurpation of Federal power by pretending to make this Act seem effective under a power which the State does not have. The Pennsylvania Act clearly violates the United States Code Title 28 Sec. 41 (R. S. 1977) which states in part:

> "All persons within the jurisdiction of the United States shall have the same right in every territory and state to make and enforce contracts, to sue, be parties, give evidence and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

The most significant fact in connection with the above provision is that it refers to "persons." Perhaps we can understand the legislative policy that precipitated such an enactment when we remember the fact that the current Pennsylvania administration did not provide any appropriation for the continuance of the Bureau of Civil

Rights, a bureau created by a prior legislature. It is not too much to assume that this Act also was intended as a curb on the civil rights of aliens within the borders of the Commonwealth of Pennsylvania. In the Court below Judge Biggs stated (R. 29):

> "The statute at bar . . . imposes a burden upon aliens simply because they are aliens."

The Court goes on to say (R. 29):

> "Even assuming that the Commonwealth of Pennsylvania possessed power to make the classification under consideration, nonetheless that classification is unreasonable for the Commonwealth would permit citizens and such aliens as are within the exemptions of this statute to pass freely from place to place, but all other aliens though lawfully within the state, must register, pay annual fees, carry identification cards to be produced on demand, and are subject to drastic penalties if they do not do so."

The TRUAX case (supra) and the case of ARROWSMITH v. VOORHIES (supra) and many other cases condemn such classification as unreasonable. In the case of EX PARTE KOTTA, 187 Cal. 27, relying upon both the Fourteenth Amendment and the Civil Rights Act (R. S. 1977), the Supreme Court of California held that the Alien Poll Tax Law of California creating an alien poll tax was invalid. The Court said (on P. 31):

> "Stated very generally the requirement is for equal protection and security of all, citizens and aliens alike, under like circumstances, in the enjoyment of their personal and civil right and in the imposition of burdens, such as penalties, taxes . . ."

The argument of the learned Attorney General that such an Act will force aliens to become naturalized is a poor one. As Judge Biggs said (R. 30, 31):

> "While naturalization of aliens residing within our borders is a matter to be encouraged, the desire of the applicant for citizenship should be inspired and engendered by his own observation of and experience with the living example of true democracy. It must never be compelled by an Act of oppression or tyranny. Otherwise, we might well be deluding ourselves in believing that when the new citizen adjures allegiance to his late sovereign and swears fealty to our government, his act is one of the heart and not of a designing mind goaded to a subterfuge. Citizenship in the best sense of the term rather than the number of naturalizations is the thing of real importance. Regulation of naturalization rests with the Federal government."

The Court must not be misled by the arguments of the Commonwealth that it can regulate certain activities of aliens such as excluding aliens from certain professions, granting aliens certain licenses, etc. Upon examination most of these rights are based upon property rights of the Commonwealth in the forests and ferae naturae so far as the right to hunt game is concerned; allegiance to the Constitution of the United States and the State where the right to practice law is concerned; and similar reasons with respect to any of the many prohibitions upon the right of an alien to engage in certain restricted activities, rightfully exercised by the States.

Plaintiff Travaglini is the holder of a motor vehicle operator's license. From time to time he uses the privilege conferred on him by this license to earn a livelihood.

Should he fail to register under the Pennsylvania Act he would be deprived of that manner of earning his livelihood. This certainly deprives him of his property rights, and as to his liberty, we quote from ALLGEYER v. LOUISIANA, 165 U. S. 578 p. 589. Said Mr. Justice Peckham, in that case speaking for the Court:

> "The liberty mentioned in the amendment means not only the right of the citizen to be free from the mere physical restraint of his person by incarceration but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his facilities; to be free to use them in all lawful ways; to live and work where he will earn his livelihood by any lawful cause; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper and necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

The case of TRUAX v. RAICH (supra) held that the alien is a person protected under the Fourteenth Amendment and entitled under the provisions thereof to adopt "the ordinary means of earning a livelihood." In California the $10 annual tax on aliens was declared unconstitutional, in the KOTTA case; in New York the Passenger Cases declared unconstitutional an attempt to levy a dollar tax on all aliens entering the port of New York. The tax or license or registration fee required under this Pennsylvania Act is nothing more than a combination of two illegal taxes. Does Pennsylvania seriously contend that by resorting to algebra where two negatives make a positive she can resort to a mathematical abracadabra and produce from the spawn of two unconstitutional levies a law which will be upheld in spite of its glaring unreasonableness and basic violation of the fundamental law of the land?

The Federal Constitution states unequivocally it is the supreme law of the land. Pennsylvania subscribed to that Constitution. The Constitution vested in Congress exclusively the right to deal with aliens. We respectfully contend that the decision of the lower Court is proper and should be sustained. The appeal should be dismissed.

Respectfully submitted:

NEEDLE, NEEDLE & NEEDLE,

HERMAN STEERMAN,

ISIDOR OSTROFF,

Attorneys for Appellees.